SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

MONTEREY COUNTYWATER RESOURCES AGENCY, Plaintiffs, vs. GREG L. DIETEL, SHARON I. DIETEL, ROY H. BROWN, MARY E. BROWN, AND DOES 1 through 20 inclusive, Defendants.	Case No.: CV 070316 PROPOSED STATEMENT OF DECISION

INTRODUCTION

This is a dispute over Three Degrees (3°); not the 1960s soul and disco singing group from Philadelphia, but an angle of measurement in a boundary dispute near Lake Nacimiento. The plaintiff is Monterey County Water Resources Agency ("Monterey"), which acquired its property in 1955 in order to operate the reservoir and watershed. The defendants are Greg and Sharon Dietel as well as Roy and Mary Brown (collectively "defendants" or "the private owners"), who purchased an adjoining parcel in 2001.

The dispute arises from a conflict between the deeds through which Monterey claims title, and the subdivision map through which the private owners claim title.

While both sides agree about the location of the common northern boundary, Monterey claims that the ensuing north-south boundary line must be ascertained from deeds created in the 1950s (and proceeds "South 3° 13' 50" West"), while the private owners urge that the north-south boundary is described in the 1978 recorded subdivision map (and proceeds "South 6° 15' 59" West"). The 3° difference in the angle measurement results in a disputed area of approximately 4 triangular-shaped acres.

Aside from presenting conflicting evidence regarding proper surveying techniques and presumptions, the parties trade barbs with respect to each other's pre-litigation conduct. The private owners claim that Monterey has slept on its rights for more than 30 years, while Monterey claims that the private owners have slept on their rights for eight years and then decided to take the law into his own hands. More particularly, Monterey claims that immediately prior to commencement of this litigation in 2007, one of the two private owners removed a pre-existing fence and placed a prefabricated residence across the disputed acreage.

As can readily be seen, the key question here involves the correct bearing of the north-south boundary between the parties' respective properties. And as will be discussed more fully below, ascertaining the correct bearing terms vitally depends not only on the facts but also on the legal rules and presumptions that apply in a boundary dispute.

STATEMENT OF FACTS

The parcels that include the now-disputed boundary began to be formed during the 1950s. On October 1, 1952, the largest and oldest parcel, known as the "Parent Deed," was created. The Parent Deed describes three parcels of land identified as Parcel A., Parcel B, and Parcel C. See Exhibits 7, 8, and 9. Parcel A is a larger parcel from which Monterey's parcel, and later the private owners' parcel, were derived. The first four courses of the legal description of Parcel A are specifically defined by reference to General Land Office ("GLO") section lines and corners.[1] The fourth course of the Parent Deed, running from the "1/16 section corner on the east line of the southeast

[1] The significance of the GLO and the federal land descriptions is explained *infra*.

quarter of section 9; thence east 1 mile to 1/16 section corner on the east line of southeast quarter of section 10", defined the mutual northern boundary of what would become Monterey's property and private owners' property.

On August 29, 1955, Monterey's property was first defined and conveyed by what is known as the "Senior Deed" (Exhibits 10 and 11), which conveyed to Monterey the western 359 acres of Parcel A from the Parent Deed. The Senior Deed matches the first three boundary courses of the Parent Deed and describes its own northern boundary as starting from a point described as "1/16 section corner on the east line of the southeast quarter of section 9" (the same starting point of the relevant northern boundary in the Parent Deed) and running "East 3300.00 feet" before turning south in a direction specifically identified in the deed as bearing "South 3° 13' 50" West" for a distance of 2582.57 feet (the disputed boundary).

On June 2, 1958, the property that was eventually conveyed to the private owners was first defined and conveyed through what is known as the "Junior Deed", which includes Parcel B lying immediately to the east of Monterey's parcel. See Exhibits 13 and 14. The property description of Parcel B in the Junior Deed runs clockwise from its northwest corner (the northeast corner of Monterey's property), ending by an exact description of the boundary line between Monterey's property and private owners' property (a line running from south to north at the bearing of "North 3° 13' 50" East", the exact bearing in the Senior Deed).

In 1978, Daniel Stewart was hired to subdivide the westerly portion of the land described in the Junior Deed. Stewart eventually prepared a parcel map dividing this property into two parcels, separated by a north-south line. Parcel 1, adjoining Monterey's property, included approximately 52.9 acres while Parcel 2, the easterly portion, contained approximately 39.9 acres.

Facing what he perceived as an ambiguity in the northern property line description in the Senior Deed, to wit, "thence; East 3300' ", Stewart engaged in an apparently-accepted surveying technique of "implying" a record angle. Given that the

terms of the Senior Deed stated “East,” yet realizing that the actual northern boundary was not true East (90° 00’ 00’) but approximately 3° south of due East, Stewart created what is known as a “record angle” and then “held” his “record angle” to establish a different north-south boundary line heading approximately 3° further to the west than what was actually stated in the Senior and Junior deeds. Stewart thereafter recorded a subdivision plat map with this different north-south boundary, which became the basis for all subsequent surveys of the property line.

DISCUSSION

Burden of Proof

The plaintiff in a quiet title action has the burden of establishing his or her claim of title. *See Coffin v. Odd Fellows Hall Ass’n* (1937) 9 Cal.2d 521; *California Real Estate 3d* (West 2001) §34:111. Because a plaintiff must stand on the strength of his or her own title, and not the weakness of the defendant's title, a plaintiff can only prevail by meeting the burden of proving, by sufficient evidence, ownership of the claimed interest. *See Gerhard v. Stephens* (1968) 68 Cal.2d 864; *Kunza v. Gaskell* (1979) 91 Cal.App.3d 201. Accordingly, Monterey has the burden of proving its title, while private owners, in the cross complaint, have the burden of proving their title.

Determining Ownership of the Disputed Property

The courts have developed rules of construction and presumptions designed to resolve problems created where, as here, sequential deed descriptions are ambiguous. There are three fundamental rules of priority, two of which are applicable and play significant roles in resolving the current dispute. *See Brown’s Boundary Control and Legal Principles*, Brown, Robillard, and Wilson 4th Ed. (1995), Chapter 11, page 249 (hereinafter "*Brown’s Boundary Control*").[2]

First, as discussed in *Gardner v. Board of Sonoma* (2003) 29 Cal.4th 990, 1001 and 1002, n.10, and more recently in *People ex. rel. Brown v. Tehama Board of Supervisors* (2007) 149 Cal.App.4th 422, 440-441, the courts have made clear that the

[2] The third important rule, based upon a right of possession, is not applicable.

intentions of the parties to the conveyance are paramount in assessing ownership, boundaries and other attributes of conveyances:

> As far as we can determine, historically the law that governs the interpretation of deeds has been that "the intention of the parties is the controlling consideration. . . . In construing a doubtful description in a grant, the court must assume as nearly as possible the position of the contracting parties, and consider the circumstances of the transaction between them, and then read and interpret the words used in the light of the circumstances. *Tehama County Board of Supervisors, supra*, 149 Cal.App.4th at 440-441 (internal citations omitted). *See, e.g., Martin v. Lloyd* (1892) 94 Cal. 195, 202 (property boundary dispute).

Second, as between private parties in a land dispute, a senior property right is superior to a junior property right. *See Brown's Boundary Control*, Chapter 11, page 249. This is because an individual who grants title to real property can grant no more interest than what was originally granted to him or her. *Id*. The document by which the earliest interest was granted is very important. Therefore, with the boundary dispute presented by this case, any conflicting description in the Junior Deed must yield to a description in the Senior Deed. In turn, any conflicting description in the Senior Deed must yield to a description in the Parent Deed.

In order to appreciate the parties' intentions, one must first understand the two very different ways used to describe property boundaries in California. The first method is by reference to GLO boundaries, sometimes called "sectionalized boundaries"; the second method is by reference to metes and bounds descriptions, sometimes called "non-sectionalized boundaries". *See generally Brown's Boundary Control*, Chapters 5 and 6. As the Court of Appeal explained in *John Taft Corp. v. Advisory Agency* (1984) 161 Cal.App.3d 749, 754, 757 (internal citations omitted):

> The U.S. Survey Map was prepared pursuant to the federal survey law which was enacted to provide a common method of property description. . . After California became a part of the United States in 1848, all of its public lands-those not encompassed by the boundaries of the Pueblo or Spanish or Mexican land grant-were surveyed utilizing the system described by the federal survey law. The survey established a grid system

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> oriented to North and South meridians and utilized a 6 mile square township as its basic building blocks.
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> The townships are divided into 36 sections, each theoretically 1 mile square. Monuments mark section corners and the midpoint between them (quarter corners) which may be used to divide the sections into quarter sections are smaller units. Due the earth's curvature, the meridians converge at the polls and the northern boundaries of the townships are narrower than the southern boundaries. The deficiency (or excess) is apportioned to quarter-quarter sections on the north and west sides of the section. The quarter sections in these areas are further divided into half-quarter sections of 80 acres each along the interior edges of the section, which are then divided into "lots" or "fractional quarters" of a quarter, approximately 40 acres each. . . .
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> [T]he California Supreme Court has held that there is no described tract of land ... until it has been located within the congressional township, by an actual survey and establishment of the lines, under the authority of the United States, and the survey has been approved by the proper United States surveyor-general. Consequently, where a deed refers to a map marking the boundaries of the land conveyed, the map must be regarded as providing the true description of the land.

Non-sectionalized boundaries are an entirely different matter. A metes description is created by starting at a "point of commencement" that may or may not be on the parcel being described, and then proceeding by courses (containing bearings and distances) to a "point of beginning". The course usually proceeds in a clockwise or counterclockwise direction in a systematic manner that encompasses a closed figure. *See Brown's Boundary Control*, Chapters 6, pages 98 -- 99. A bounds description is one that is written and interpreted as if the person were standing in the center of a parcel of land looking outward to the boundaries of the parcel being described. *Id*., pages 99 -- 100. A metes and bounds deed contains elements of both types of descriptions.

Whereas metes and bounds descriptions are notoriously "complex and fraught with possible conflicts" (*Brown's Boundary Control*, Chapters 6, page 105), it has long been the rule that an official GLO survey of the United States government cannot be impeached by collateral attack in an action between private parties to determine title to

land. *See, e.g., Fripp v. Walters* (2005) 132 Cal.App.4th 656, 661-662; *Weaver v. Howatt* (1915) 171 Cal. 302, 306; *Chapman v. Polack* (1886) 70 Cal. 487. The deeds at issue in this case combine references to the GLO system with references to metes and bounds descriptions, something that is not unusual in California deeds.

The issue here boils down to whether the term "East 3300,'" as used to describe the northern boundary in the Senior Deed, was intended by the scrivener to designate true East, or rather an approximate direction that was more particularly described by reference to the 1/16th section corners under the GLO system. To decide this question, the Court must place itself, as nearly as possible, in the position of the drafter of the Senior Deed. In this regard, the first four courses of the Parent Deed, and the first three courses of the Senior Deed, are defined by GLO section lines and corners. The Parent Deed from 1952 specifically references two 1/16th section corners in defining the common northern boundary of Monterey and the private owners' property. The Senior Deed was written less than three years later and followed the northern boundary of the Parent Deed in all other pertinent details.

Especially given the long-standing importance and sanctity of government GLO surveys, no logical reason has been offered why the scrivener of the 1955 deed would have been unaware of the true GLO section boundary, or why he would have deviated 3° from a known government location when locating the northern line. It is far more likely that the 1955 scrivener was aware that the true boundary fell approximately 3° south of due East, and that the reference to East was merely a sloppy way of describing the GLO boundary that was explicitly stated in the Parent Deed. Therefore, the reference to "South 3° 13' 50" West" in the Senior Deed meant exactly what it said. There is no need to adjust this bearing.

The testimony of two critical defense witnesses, Skip Touchon of Twin Cities Surveying, and Daniel Stewart (who performed the 1978 survey), fortifies the Court's conclusion. Both witnesses acknowledged that the common northern boundary was known to them by virtue of reference to prior deeds containing GLO section markers.

Touchon specifically admitted that the intent of the drafter of the Senior Deed was to go along the 1/16th line and that this boundary was accepted by himself and Stewart as the call in the Senior Deed.

Because the basis for and alignment of the actual northern boundary was very likely known to the 1955 scrivener, it is most likely that the phrase "thence; East 3300 feet" in the Senior Deed was intended to mean "thence east along the established and pre-existing northern boundary for a distance of 3300 feet" before proceeding south at the bearing specified in the Senior and Junior Deeds. In other words, the drafter of the Senior Deed envisioned that the now-disputed south bound bearing would commence from a point 3300' along the northern boundary between the two 1/16th section corners irrespective of the actual astronomical bearing. This is a logical and compelling interpretation of the evidence.

In support of their argument that an implied angle is necessary, Defendants' rely heavily upon one principle discussed in an earlier volume of *Brown's Boundary Control*.[3] In particular, they point to the following principle taken from the chapter entitled "Locating Sequence Conveyances:"

> Where the bearing of a known line is given in a metes and bounds description, the bearing as given is assumed to be correct; successive courses are surveyed relative to the giving bearing whether the given bearing is astronomically correct or not.

There are several problems with employment of the stated principle. First, defendants attempt to emphasize this one principle *out of 27 that are stated in the chapter*, and they attempt to imbue it with an importance to which it is not entitled. As set forth in the same chapter of *Brown's Boundary Control*, at page 293:

> To state definitely that one construction always controls another is to err. The foregoing principles aid in interpreting what the courts declared to be the normal manner in which intent is expressed. To determine the intent

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[3] The actual reference submitted was a page or two from the second edition of Brown's treatise.

> of each term of the deed without considering each term in the light of all other terms is to err; the intent is to be gathered from all the terms of the deed, the circumstances under which the deed was written, and the facts on the ground.

This caveat has special relevance here because the circumstances under which the Senior and Junior Deeds were written demonstrate that the alignment of the actual northern boundary was very likely known to the 1955 and 1958 scriveners, such that the phrase "thence; East 3300 feet" in the Senior Deed was intended to mean a line drawn along the established northern boundary, with the next southern bearing being taken from that location.

Second, an equally important principle of deed interpretation is that the phrase "thence; East 3300 feet" only means "due" East "when that construction is necessary for certainty, or when there is nothing else to show that it was not used in that strict sense." (*Martin v. Lloyd* (1892) 94 Cal. 195, 202 citing *Irwin v. Towne* (1871) 42 Cal. 23; Delvin on Deeds, sec. 1035); *Richfield Oil Corp. v. Crawford* (1952) 39 Cal.2d 729, 741; *Currier v. Nelson* (1892) 96 Cal. 505, 508; *Green v. Palmer* (1924) 68 Cal.App.393, 401. This presumption is rebutted where, as here, extrinsic evidence surrounding the transaction shows a different intent of the parties. *See Richfield Oil Corp* 39 Cal.2d at 741; *Currier v. Nelson* 96 Cal. 505, 508; *Martin v. Lloyd* (1892) 94 Cal. 195, 202; *Faris v. Phelan* 39 Cal. 612,613; *Green v. Palmer* 68 Cal.App. 393, 401 (a directional call does not mean "due" if the true description can be readily obtained by reference to other sources or to an inspection of the property on the ground); *Gutha v. Roscommon County Road Com*. 296 Mich. 600, 607.

Third, giving precedence to the thesis posited by defendants would violate the important rule that senior rights take precedence over junior rights. In other words, this Court cannot "imply an angle" if the effect is to take away approximately 4 acres of property from a senior titleholder. *Brown's Boundary Control*, Chapter 11 at page 255; Chapter 6, at page 99.

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Fourth, whereas the boundaries contained in GLO surveys are unimpeachable, those set forth in a local Subdivision Map are not. The court's discussion in *Fripp v. Walters* 132 Cal.App.4th at 664-665 is apropos:

> The [1978 subdivision map] in this case was not created to convey public lands to private parties. Instead, the conveyance was from one private party to another. While the [subdivision] map may have created boundaries within the parcel to be subdivided, it did not create the boundary between the parcel map and the property bordering it. The [1978 subdivision] map should have followed the boundary described in the [1952 and 1955 deeds], but it did not. Since the erroneous boundary was created by [subdivision] map, and not by an official government survey, it is subject to impeachment. [The 1978 subdivider] could not convey by the recording of a [subdivision] map property that he did not own.

Especially given the concessions of the defense witnesses regarding the basis for and alignment of the actual northern boundary, it is difficult to understand any need for implying an interior angle. The reference to "South 3° 13’ 50” West" in the Senior Deed meant exactly what it said. There is no legitimate reason to adjust this bearing.

Equitable Principles Do Not Bar the Parties from Asserting Their Respective Rights

Each of the parties asserts that the other side should be barred from asserting its right to title based upon inequitable conduct and delay in asserting any property rights. The private owners claim that Monterey slept on its rights for over 30 years even though it was aware of a dispute over the common boundary, and that the agency never took on the boundary issue despite repeated requests from the private owners. Monterey, on the other hand, claims that the fence was accepted as the common boundary for more than 25 years and that the private owners were advised to have the property surveyed and was given credit to accomplish that end. However, claims Monterey, instead of surveying their property, the private owners unilaterally destroyed the boundary fence.

Neither side has been particularly vigilant in asserting its property rights, and each side is guilty of at least problematic behavior. For example, Monterey has known of a probable boundary dispute for *decade*s and took no action to address it. In July

1978, Stewart notified Monterey in writing of the different boundaries, which problem was acknowledged on June 3, 1979 by Monterey's then-assistant general manager as follows: "Lines shown on this map purported to be [Monterey] property lines do not agree with the description in our recorded deed [from 1955]."

On the other hand, the private owners only became record owners in 2001 and were fully aware of this boundary dispute from the very moment they made their purchase. Yet rather than obtaining their own survey or filing a quiet title action, in 2007 one of the private owners took the law into their own hands and forced the issue by destroying a fence located within the disputed territory.

Given the lack of significant prejudice resulting from inaction by one side or the other, the Court will not bar either side from asserting its rights based upon laches or other equitable principles. *See City and County of San Francisco v. Pacello* (1978) 85 Cal.App.3d 637, 643-644; *compare Lundgren v. Lundgren* (1966) 245 Cal.App.2d 582.

CONCLUSION

Based upon all of the evidence presented at trial, the Court concludes that Monterey has carried its burden of proving its claim of title to disputed section of property. The Court also concludes that the private owners have not carried their burden of proving their claim of title to the disputed section of property. Neither side is barred from asserting its rights based upon latches or other equitable principles.

This Proposed Statement of Decision will become the Statement of Decision unless, within ten (10) days, defendants specify controverted issues or propose matters not covered in the Proposed Decision. *See* CRC Rule 3.1590(c). Defendants shall keep any controverted issues or proposals, if any, to less then ten (10) total pages and are admonished not to re-argue the case. No additional exhibits will be allowed.

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In the event that defendants specify controverted issues or propose matters not covered in the Proposed Decision, plaintiff shall have 10 days from the date of service of defendants' pleading to file a Response. Any Response shall be less than ten (10) total and shall not reargue the case. No additional exhibits shall be allowed.

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DATED: October 8, 2008

CHARLES S. CRANDALL
Judge of the Superior Court

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